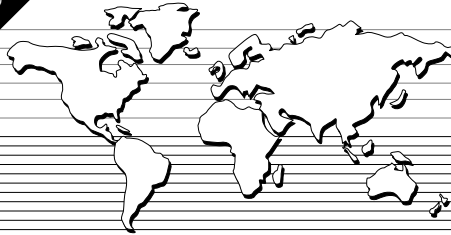




U.S. Department of the Treasury
Office of Foreign Assets Control



BURMA

What You Need To Know About U.S. Sanctions Against Burma (Myanmar)

An overview of the Burmese Sanctions Regulations Title 31 Part 537 of the U.S. Code of Federal Regulations

■ **INTRODUCTION** - On May 20, 1997, in response to the Burmese Government's large scale repression of and violence against the Democratic opposition, President Clinton issued Executive Order No. 13047 declaring a national emergency with respect to Burma. The order, issued under the authority § 570(b) of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1997 (Public Law 104-208) (the "Act") and the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), prohibits new investment in Burma by U.S. persons, and their facilitation of new investment in Burma by foreign persons. The summary which follows is intended as a broad overview of the Regulations.

Criminal penalties for violating the Burmese Sanctions Regulations range up to 10 years in jail, \$500,000 in corporate, and \$250,000 in individual fines. In addition, civil penalties of up to \$11,000 per violation may be imposed administratively.

■ **NEW INVESTMENT** - The sanctions prohibit new investment in Burma (Myanmar) by U.S. persons on or after May 21, 1997, unless such investment is pursuant to an agreement in place prior to May 21, 1997. A number of criteria are used to determine whether or not a specific activity is "grandfathered." Factors taken into account include the clarity of the scope of the agreement, the degree of specificity with which the activity is described, and the extent to which the terms of the agreement are legally enforceable. U.S. persons with pre-effective date agreements for the economic development of resources located in Burma should contact the Office of Foreign Assets Control for a determination as to whether or not their project is exempted from the sanctions.

New investment in Burma is defined as a contract with the Government of Burma or a nongovernmental entity in Burma for the development of resources (including natural, agricultural, commercial, financial, industrial and human resources) located in Burma. The prohibition includes purchasing a share of ownership (an equity interest) in a project or entering into an agreement which provides for a participation in royalties, earnings, and profits from the economic development of resources located in Burma. The Executive order also prohibits a U.S. company from entering into a contract which provides for the general supervision and guarantee of another person's performance of an agreement for the economic development of resources located in Burma.

Some examples of prohibited new investment are as follows:

- ✓ A U.S. company wishes to build a new factory in Burma where its products will be produced. This is likely to involve an agreement for the development of industrial, commercial, and human resources located in Burma and is prohibited.
- ✓ A U.S. contractor has been asked by a foreign oil company to be the general contractor for its oil exploration project in Burma. The U.S. company would not only supervise the sub-contractors, but also guarantee their performance. This activity is considered new investment and is prohibited.
- ✓ A U.S. sub-contractor has been asked to perform a service for the general contractor in the previous example, but will have no supervisory functions. The sub-contractor is merely providing a service and its activities in Burma are *not* prohibited (see "**General Exemptions**" below).
- ✓ A U.S. company has been asked by a European company to provide ongoing technical support for its factory in Burma. The contract calls for the U.S. company to be paid a percentage of the profits generated by the Burmese factory. This is a prohibited new investment in Burma.

■ **FACILITATION** - A U.S. person is prohibited from approving, aiding or supporting a foreign person's investment in Burma, if the foreign person's activity would constitute prohibited new investment if engaged in by a U.S. person. Exception: While contracting to sell to a foreign person a U.S. person's equity or income interest in a development project in Burma constitutes facilitation of that foreign person's investment in Burma, such a divestiture is authorized by general license to proceed. If the transaction is valued at more than \$10,000, a report must be filed for statistical purposes with the Office of Foreign Assets Control, within ten business days of the signing of such an agreement.

Examples of prohibited facilitation of a foreign person's new investment in Burma follow:

- ✓ The foreign subsidiary of a U.S. company wishes to bid on a project to develop a coal mine in Burma. The U.S. parent cannot approve, supervise, or otherwise be involved in the foreign subsidiary's negotiations with regard to this project.
- ✓ A U.S. oil company holds a pre-effective date contract to

develop a Burmese oil field. It wishes to sell its rights under the contract to a foreign company. It is authorized to sell an interest without prior authorization from OFAC, but if the agreement is valued at more than \$10,000, the seller must file a report with OFAC within ten days of the signing of the agreement.

■ **INVESTMENT IN THIRD COUNTRY COMPANIES** - U.S. persons are prohibited from purchasing shares in a third-country company where the company's profits are predominantly derived from the company's economic development of resources located in Burma. If a person holds shares in an entity that subsequently engages exclusively or predominantly in the economic development of resources in Burma, or subsequently derives its income exclusively or predominantly from such activity, the U.S. person is not required to relinquish its shares, but may not purchase additional shares. If the U.S. person sells off shares valued at more than \$10,000, the seller must file a report with OFAC for statistical purposes within ten days of the sale.

■ **GENERAL EXEMPTIONS** - The **sale or purchase of goods or services** to or from Burma is exempt from these sanctions, provided the transaction does not result in a U.S. person's acquisition of an equity or income interest in a project for the development of resources located in Burma. (Services constituting the general supervision and guarantee of another person's agreement for the economic development of resources located in Burma are not exempt.) This trade exemption **includes financial services**, such as funds transfers, letters of credit, and financing contracts, provided that the instrument is not collateralized by a project for the development of resources located in Burma.

Investment in Burma in not-for-profit, educational, health or other **humanitarian** programs or activities is authorized.

If you have information regarding possible violations of any of these regulations, please call the Treasury Department's Office of Foreign Assets Control at 202/622-2430. Your call will be handled confidentially.

This document is explanatory only and does not have the force of law. Executive Order 13047 and the implementing Burmese Sanctions Regulations (31 CFR Part 537) contain the legally binding provisions governing the sanctions against Burma described above. This document does not supplement or modify Executive Order 13047 or 31 CFR Part 537.

The Treasury Department's Office of Foreign Assets Control also administers sanctions programs involving Libya, Iraq, the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-controlled areas of the Republic of Bosnia and Herzegovina [including an Executive Order relating to Kosovo], Cuba, the National Union for the Total Independence of Angola (UNITA), North Korea, Iran, Syria, Sudan, international terrorists, Foreign Terrorist Organizations, international narcotics traffickers, and designated foreign persons who promote the proliferation of weapons of mass destruction. For additional information about these programs or about sanctions against Burma, please contact the:

OFFICE OF FOREIGN ASSETS CONTROL
U.S. Department of the Treasury
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